notice should always be given, the jurisdiction of the Court to make an adjudication order is not ousted if no notice is in fact given, see *In re Ponsford*, 1904, 2 K.B. p. 704.

Kwek Chia Yiak having been apprised of his unpleasant position is perfectly ready to pay in full the only creditor who has proved.

At this point the Official Assignee has come to the Court to ask for directions on the following points:—

(1) Whether it is the duty of the Official Assignee to take steps to recover from the 87 creditors referred to in his affidavit of the 18th day of October, 1934, the $10,609.79 alleged to have been paid to them in May 1922;
(2) whether the 87 creditors are entitled to prove against the joint estate of Chop Guan Seng;
(3) whether in the event of a first dividend being declared in the bankruptcy the 87 creditors are entitled to notice under Bankruptcy Rule 191 (1).

As regards the first point, it was no doubt the duty of the Official Assignee at the time to get back the money paid to the 87 creditors for the benefit of the creditors generally. As the payments were not protected by a properly registered composition deed, they were clearly fraudulent preferences. But that was 12 years ago and now the payments are *prima facie* statute barred. The answer to the first question therefore is that it is not the duty of the present Official Assignee to take any such steps.

As regards the second point, section 40 (3) of the Ordinance provides that all debts and liabilities.....to which the debtor is subject at the date of the receiving order..... .....shall be deemed to be debts provable in bankruptcy.

If therefore the debts were provable at the date of the Receiving Order, there can be no question of limitation as against the creditors (see *Williams*, 14th ed. p. 158) and *prima facie* the debts are provable unless the 87 creditors are estopped by the fact that they signed the unregistered deed. This point was carefully considered in the case of *In re a Bankruptcy Notice*, (1924) 2 Ch. p. 76, and this case makes it clear that, quite apart from the saving clause that all the creditors must accept the composition, the creditors cannot be estopped by a document which the legislature has declared to be invalid. I have no doubt therefore that the 87 creditors can still prove. They would of course have to give credit for the 20% which they accepted and it is possible that if they sought the benefit of the Ordinance they might have to repay the amount which they had received by way of fraudulent preference. This point has not been argued before me and I give no decision upon it.

As regards the third point, section 62 of the Ordinance makes it clear that the Official Assignee need not make reservation for the possible claims of the 87 creditors. Nor need he notify them individually if he decides to distribute a final dividend (see section 64 (2)).

It would appear that the proper course will be for the bankrupt to undergo his public examination which will be a purely formal matter. He can then pay the Official Assignee enough to satisfy the petitioning creditor in full and can apply for his discharge. If as the result of the advertisement of the application for discharge any of the 87 creditors make claims the position can be reconsidered. In the circumstances it appears to be extremely unlikely that they will do so.

Directions Accordingly.

Solicitor for Kwek Chia Yak—
Zehnder Brothers.

[APPELLATE CRIMINAL JURISDICTION]
TERRELL, J.
December 21, 1934.

REX v. A. GOVINDASAMY AND KOH HAK BENG.

[SINGAPORE MAGISTRATES APPEAL No. 51 of 1934]

Criminal Procedure Code Ss. 169 and 175—two accused tried together—Illustration (c) to S. 175 explained—Penal Code S. 193—degree of proof required in trials under such section.

The two accused were tried jointly with giving false evidence in a civil judicial proceeding in the Supreme Court. They each swore an affidavit to support the same application and each of these affidavits was false in certain particulars.

Held, that there was an intention common to both offences which connected them together and enabled the Court to hold that they had been committed in the same transaction and that there was no misjoinder.

Also Held, that there is nothing in the Penal Code or the Evidence Ordinance which requires a degree of proof in the case of trials under S. 193 of the Penal Code different from that required in other criminal cases.

Magistrate's Appeal.

The facts and arguments sufficiently appear from the Judgment.

K. Seth, for both Appellants.
Adrian Clark, D.P.P., for Crown.

Cur. Ad. Vult.

TERRELL, J.—In May 1934 the second accused commenced a civil suit No. 241 of 1934 against one Koh Phee Tin, the complainant in the case. Shortly after the issue of the writ the second accused applied *ex parte* for the arrest of the complainant under the provisions of section 680 of the Civil Procedure Code, supporting his application with an affidavit sworn on the 11th May, 1934. The application was further sup-

ported by the affidavit of the first accused who was a process server of the Court. The two accused were charged under section 193 of the Penal Code in respect of some of the statements in these affidavits which they either knew or believed to be false or which they did not believe to be true. They were represented by the same counsel at the trial and were tried together and both convicted. From these convictions they now appeal.

It is not necessary for me to go into the facts, as I am satisfied that there was ample evidence to justify the finding of the learned District Judge.

Two points of law, however, were raised before me. They were

(1) that the trial was illegal as the charges against the two accused could not be tried together, and

(2) that the charges under section 193 are subject to a special rule as regards proof which does not apply in other criminal cases.

As regards (1) ordinarily every person must be tried separately on every charge (section 169 of the Criminal Procedure Code). But there are various statutory exceptions to this rule which are set out in sections 170, 171, 172 and 175. Sections 170, 171 and 172 deal with the cases of several charges against the same person being tried together. Section 175 deals with the case of more persons than one being charged jointly. It is therefore an enabling section. The words relevant to this appeal are as follows:—

> "Where more persons than one are accused . . . . . of different offences committed in the same transaction . . . . they may be charged and tried together."

The question for the Court to determine therefore is whether the swearing of the two affidavits was in the same transaction or not Reliance was placed on illustration (e) to section 175 which reads:

> "A and B are accused of giving false evidence in the same proceeding. They should be charged and tried separately."

At first sight this illustration would appear to be strongly in the appellants' favour, but on consideration I have come to the conclusion that it is not so. It is quite clear, for instance, that in a trial lasting several days witness A may have falsely sworn that he was not in Singapore on a particular day and subsequently in the same trial witness B may have falsely sworn that he was not in the habit of borrowing money from the accused. These are obviously distinct and unconnected offences. Offences are not related merely because they have been committed on the same day or in the same town, or with respect to the same person. In other words there must be a 'nexus', there must be some intention common to both offences which connects them together and enables the Court to hold that they have been committed in the same transaction. I think that in the case before the Court these requirements are satisfied. The two appellants both swore affidavits, not even on the same day, but to support the same application. Both affidavits were false in several particulars and their common object was to secure the illegal arrest of the complainant.

I do not think that any purpose will be served by referring to the Indian authorities as the Court must decide according to the facts of the particular case. Nor need I consider whether a misjoinder would be merely an irregularity which could be cured, or an illegality which would be fatal.

The other point of law raised by the appellants was that in charges under section 193 of the Penal Code there is a special rule of proof which is stricter than the rule which generally applied to criminal cases. The rule is stated in its most extreme form in the case of the *Queen* v. *Ahmed Ally*, 11 W.R. Cr. p. 25, cited with approval by the Court in *Gupta* v. *The Emperor*, A.I.R. 1924 Rangoon, p. 17 at p. 20, where it is laid down:

> "The true rule is that no men can be convicted of giving false evidence except on proof of facts which if accepted as true show not merely that it is incredible but that it is impossible that the statements of the party accused made on oath can be true."

In a later case *Mohamed Ismail Khan* v. *The Emperor*, A.I.R. Oudh, 1919, p. 22, the Court expressly dissented from the supposed rule as stated in the case of the *Queen* v. *Ahmed Ally*. The Court, however, laid down a modified rule, namely that to justify a conviction for perjury it must be shown that the evidence cannot be explained on any other reasonable hypothesis.

The decisions of the Courts in India are not of course binding on this Court, and I certainly cannot accept the rule as stated in the *Queen* v. *Ahmed Ally*, which would make a conviction for perjury impossible unless the accused had made on oath two distinct statements diametrically opposed to one another. This is of course a matter of such rare occurrence that section 193 would be a dead letter if the rule were observed. Nor can I accept the modified rule laid down in *Mohamed Ismail Khan* v. *The Emperor* if it professes to require a different degree of proof in perjury cases to that required in all criminal cases. In trials for perjury, as in other trials, the jury, or in summary cases the Magistrate, must be satisfied as to the guilt of the accused beyond reasonable doubt, and there is nothing in the Penal Code or in the Evidence Ordinance

which requires a different degree of proof in the case of trials under section 193.

The appeals will therefore be dismissed and the convictions and sentences confirmed.

Appeal dismissed.

Solicitors for the Appellants—

Sisson & Delay.

[APPELLATE CRIMINAL JURISDICTION]

TERRELL, J.

January 3, 1935.

REX VS. NG GUAN THONG.

[SINGAPORE MAGISTRATES APPEAL No. 47 of 1934]

Criminal Procedure Code S. 297—Amendment of grounds of Appeal—New trial.

An amended petition of appeal can only be filed out of time if the respondent consents or if leave to do so has been obtained from the Court by Motion under S. 297 of the Criminal Procedure Code, otherwise the Court will not allow any new grounds of appeal contained therein to be argued.

To justify the Court in ordering a new trial in a criminal cause on the ground of fresh evidence coming to the knowledge of the accused subsequently to the trial, it must be shown that the evidence is such that it is reasonably likely that it would be believed and that such evidence at least raises the probability that the verdict might have been reversed if such evidence had been before the Court of trial.

The appellant was tried by the Singapore District Judge on a charge of criminal breach of trust in respect of a sum of $3,466.67 held by him as cashier of a firm. The defence sought to show that the deficiency in cash was accounted for by a number of payments made at various times on behalf of the firm but not entered in the firm's books at the times when such payments were alleged to have been made.

The appellant was convicted and sentenced to 4 months' rigorous imprisonment and to a fine of $500.00 or in default 4 months' rigorous imprisonment.

The Appellant gave notice of appeal on 6th September, 1934 and filed his petition of appeal on 14th September, 1934. This petition was based on various grounds including one dealing with the non-production by the prosecution of two alleged receipts for $150 and $50 respectively.

On 24th October the appellant filed an amended petition of appeal which, in addition to all the grounds contained in the original petition, prayed permission to adduce further evidence, such evidence consisting as to (a) of the said two receipts (which had throughout been in the possession of the police) and as to (b) of an alleged list of debtors of the complainant's firm. The affidavits accompanying the amended petition alleged that this list had been handed by the complainant to the appellant in 1928 in the ordinary course of the firm's business; had been in his possession ever since; and had been mislaid at the time of the trial and since found.

This amended petition prayed, in the alternative, that a new trial might be ordered so that this evidence (a) and (b) might be considered.

The D.P.P. gave notice, on the 5th November, 1934, to the Appellant that he would object to the amended petition of appeal being considered, no permission to file it having been obtained under S. 297 of the Criminal Procedure Code.

The Appellant thereafter filed a motion to adduce fresh evidence but filed no motion under S. 297 of the Criminal Procedure Code.

Knowles for Appellant.

Adrian Clark, D.P.P., for the Crown took the objection of which he had given notice, but, by consent, the appeal was nevertheless argued subject to that objection.

Cur. Ad. Vult.

The motion and the appeal were dismissed and the conviction and sentence were affirmed,

TERRELL, J. delivered an oral judgment follows:—

"With regard to the filing of the amended petition of appeal the Appellant should only have been heard on the original petition. The amended petition was out of time and (unless the respondent consented to such a course) grounds of appeal not contained in the original petition can only be argued if leave to do so has first been obtained from the Court by motion under S. 297 of the Criminal Procedure Code.

Having heard the appeal argued on the merits, the Court also rules that, had the amended petition been in time, a new trial could not have been granted. With regard to the alleged list of debtors it was incumbent on the appellant to show why this list had not been produced by him at his trial; to give a satisfactory explanation as to where it had been and why it had not been found till six weeks after the appeal had been lodged; and to explain how the document came to be produced from his custody, when, if genuine, it should presumably have remained in the custody of the firm to whose business it related. The appellant in the affidavits filed on his behalf has failed to meet these requirements.

Moreover, to justify a Court in ordering a new trial on the ground of evidence that has come to the knowledge of the appellant since his trial, it must be shewn that the evidence was such that it is reasonably likely that it would be believed and that, though it is perhaps not necessary in criminal matters to say that the evidence would certainly have reversed the verdict, it must be evidence which at least raises the probability that the verdict might have been reversed if such evidence had been before the Court of trial. In the present appeal all the allegations made by the appellant about the list of debtors have been denied by the complainant